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Paper No. 10

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COPY MAILED
JUN 30 2005
OFFICE OF PETITIONS

In re Patent No. 6,149,165 :
Tuan Nguyen :
Issue Date: November 21, 2000 : ON PETITION
Application No. 09/104,852 :
Filed: June 25, 1998 :
Attorney Docket No. NGU1-A94A :

This is in response to the Petition to Accept Maintenance Fee pursuant to 1.378(b) filed May 25, 2005, which is properly treated as a petition under 37 CFR 1.377 to accept and record a maintenance fee.

The petition under § 1.377 is **DISMISSED**.

Patentee is given **TWO (2) MONTHS** from the mail date of this decision to respond. This period is not extendable. See § 1.181(f).

The above-identified patent issued on November 21, 2000. The window for paying the first maintenance fee extended from November 21, 2003 through May 21, 2004 without surcharge, and from May 22, 2004 through November 21, 2004 with surcharge. A Notice of Patent Expiration was mailed on December 22, 2004.

Patentee asserts that the maintenance fee (with surcharge) was timely filed by facsimile transmission on May 27, 2004. In

support thereof, petitioner states that they are submitting a copy of the 5 page facsimile communication as presented to the Office on May 27, 2004.

37 CFR § 1.377 provides that:

- (a) Any patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Director to accept and record the maintenance fee.
- (b) Any petition under this section must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of, and must be accompanied by the fee set forth in § 1.17(h). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.
- (c) Any petition filed under this section must comply with the requirements of § 1.181(b) and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

To show late receipt of the Notice of Patent Expiration, petitioner submits a copy of the envelope they state the Notice was received in. The envelope bears a postmark date of February 25, 2005. Considering this evidence, it is concluded that the petition was promptly filed after becoming aware of the expiration of the patent.

However, petitioner's evidence does not show that the maintenance fee and surcharge were filed prior to the expiration of the patent. First, of all, only 3 pages of the 5 pages of the copy of the facsimile said to have originally been submitted were received on petition. Those pages were limited to a certificate of transmission dated May 27, 2004 and a facsimile confirmation sheet supporting a conclusion that 5 pages were received in the Office on May 27, 2004. The certificate was on a separate page and certified that correspondence entitled "Maintenance Fee Payment" was being faxed. Yet, a copy of the correspondence entitled "Maintenance Fee Payment" was not provided on petition. Moreover, petitioner alleges that the payment of the required fee in the above-identified patent was

directed to be paid by a Credit Card. The evidence does not show that as of May 27, 2004, any payment of the maintenance fee and surcharge would have been honored had it been presented to the Credit Card company.

On renewed petition, patentee must make a showing that the paper as filed by facsimile on May 27, 2004 included an authorization to charge a Credit Card the required fees, and that the authorized Credit Card account had sufficient funds available to make such a payment.

(The maintenance fee having never been charged is now being charged to petitioner's Credit Card, pursuant to the Credit Card authorization submitted on petition. If the payment is ultimately not accepted, the payment will be refunded.)

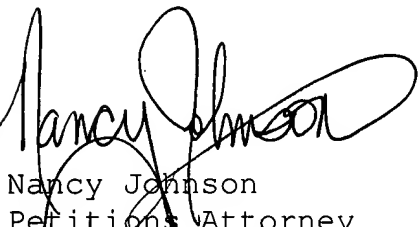
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (703) 872-9306
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Petitions Attorney
Office of Petitions